

Michigan Department of Civil Service

REGULATION

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Subject: WORKING OUT OF CLASS			

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1. PURPOSE

This regulation establishes the standards and procedures to determine what constitutes working out of class. This regulation covers all classified employees. The standards in this regulation determine the compensation rates, eligibility, time periods, and when credential credit that may be is warranted for all employees. The collective bargaining agreements may determine the compensation rates, eligibility, and time periods for exclusively represented employees. For nonrepresented employees this regulation determines compensation, allowable time period, and eligibility.

2. CIVIL SERVICE COMMISSION RULE REFERENCE

Rule 1-3 Regulations — The state personnel director is authorized to issue regulations that the director deems to be necessary or useful. A regulation issued

by the state personnel director is binding on the department of civil service, unless the commission finds that the regulation violates a rule. The state personnel director shall make all regulations available to employees through their personnel offices and the internet.

Rule 4-5 Working out of Class

(a) Working out of class assignment. An appointing authority may temporarily assign an employee to work out of class only if (1) the employee is performing duties and responsibilities of an existing position or (2) the department of civil service has approved in advance a request for the employee to work out of class. A working out of class assignment cannot exceed one year.

(b) Working-out-of-class pay. If an employee is assigned to work out of class for more than 10 consecutive workdays, the employee is entitled to supplemental pay and benefits for the temporary assignment in accordance with civil service rules and regulations.

(1) Claims for working-out-of-class pay. If an employee is assigned to work out of class and does not receive authorized supplemental working-out-of-class pay and benefits, the employee may request a technical working-out-of-class determination.

(A) Time Limit. A request for a technical working-out-of-class determination must be filed during the working-out-of-class assignment or within 28 calendar days after the end of the assignment.

(B) Back pay. In a technical working-out-of-class determination, the civil service review officer may award back pay and benefits for working out of class for a maximum of one year before the end of the working-out-of-class assignment. No supplemental working-out-of-class pay or benefits are payable for any period longer than one year even if the employee worked out of class for more than one year.

(2) Relation to collective bargaining. Working out of class is a prohibited subject of bargaining. The exclusive procedure for any employee, including an exclusively represented employee, to bring a claim for working-out-of-class pay and

benefits is to file a request for a technical working-out-of-class determination.

(c) ~~Exclusions.~~ An employee in any of the following circumstances is not considered to be working out of class:

- (1) The employee is working in a preauthorized position.
- (2) The employee is occupying a position downgraded for training.
- (3) The employee is occupying a position that is reclassifiable.
- (4) The employee is an overall assistant who normally substitutes for the employee's supervisor.

~~Rule 4-5. Working out of Class — In accordance with civil service rules and regulations, an appointing authority may temporarily assign an employee to perform duties and responsibilities of another classification appropriately classified by the department of civil service. Benefits accrue to an employee in a temporary assignment in accordance with such classification.~~

(a) ~~Exception.~~ Provisions of this rule do not apply to the following employees:

- (1) An employee working in a preauthorized position.
- (2) An employee in a position downgraded for training.
- (3) An employee occupying a position that is reclassifiable.
- (4) An overall assistant who normally substitutes for the employee's supervisor.

(b) ~~Filing claims.~~ A claim for working out of class must be presented no later than 20 workdays after the working out of class assignment has been discontinued. Retroactivity of any claim is governed by the time limits set forth under these rules and applicable regulations.

Rule 5-1 Civil Service Compensation Plan

5-1.1 Application

(a) ***General application.*** All eligible employees in the classified service receive compensation and fringe benefits in accordance with the compensation plan, except as provided in subsection (b).

(b) ~~***Collective bargaining agreement.*** All employees in the classified service are covered by these rules, except that employees covered by an approved collective bargaining agreement differing from the compensation plan are governed by the collective bargaining agreement, where different.~~

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Rule 5-3 Compensation Schedules

5-3.1 Compensation Schedules — The civil service commission shall approve compensation schedules that establish the rates of compensation for each class of positions in the classified service. The rates of compensation authorized are for full-time employment. Payment for part-time service is proportionate to the time actually worked. If a new classification is added to the classification plan, the state personnel director shall initially establish the rates of compensation for the classification.

* * *

3. DEFINITION

A. Definition as Used in This Regulation

1. ***Working out of class (WOC)*** means the temporary assignment to an employee by an appointing authority or designee to perform duties and responsibilities of a different classification. An employee is recognized as working out of class when the employee performs all, or substantially all, of the duties and responsibilities that distinguish the temporary assignment classification from the classification in which the employee is currently classified.

For operational purposes, an employee is recognized as working out of class when the employee (1) is assigned to a temporary

assignment by an appointing authority, or designee, to perform duties and responsibilities of a different classification; (2) performs all, or substantially all, of the duties and responsibilities which distinguish the temporary assignment from the classification in which the employee is currently classified; and (3) performs in the temporary assignment for the qualifying time period of more than 10 consecutive, full workdays.

4. **STANDARDS**

A. **All Classified Employees**

1. **Authorized**

- a. The appointing authority or agency management may assign an employee duties and responsibilities of a different classification on a temporary basis, ensuring equal opportunity in such assignments.
- b. A working-out-of-class assignment can be made when any of the following situations exist:
 - (1) When it is not practical or feasible, due to time constraints, to establish, recruit for, and fill a temporary position.
 - (2) When there is an urgent or critical need to have duties and responsibilities performed during the absence of another employee.
 - (3) When the appointing authority is in the process of recruiting to fill the permanent position.
 - (4) When pending organizational changes within the agency or changes in its leadership necessitate temporary work assignments.
 - (5) When it is not practical to use one of the alternatives listed in Standard C-B.1.
- c. The following situations do not constitute working out of class:

- (1) An employee working at a higher level within a recognized preauthorized or preauthorizable class series, pattern position, or position downgraded for training.
- (2) An overall assistant having direct-line authority and responsibility over the organizational entity. The classification concept for the assistant takes into consideration the fact that the assistant may be required to act as the chief supervisor in the absence of the supervisor. If the supervisor is absent for more than six consecutive pay periods, the assistant may be compensated for working out of class. The working-out-of-class payment will not include the qualifying time of the first six pay periods.
- (3) An employee claiming to be working out of class while performing the permanently assigned duties and responsibilities of a position when reclassification is possible or has occurred. For example, an experienced-level employee would not be approved for working out of class in an advanced-level classification, performing the same set of duties, because movement from the experienced level to the advanced level can be accomplished via reclassification. A position reclassification and a working-out-of-class assignment are mutually exclusive events, meaning that pursuit of both applications relative to a common job assignment cannot be achieved.

d. Working out of class is authorized only for work that has been properly classified. The appointing authority must submit a Position Action Request form (CS-129), a Position Description form (CS-214), and any other necessary documentation for a classification review before processing the working-out-of-class payment when any of the following conditions exist:

- (1) An employee is assigned duties and responsibilities that have not been classified by the Department of Civil Service;

- (2) A question exists between the employee, the appointing authority, or the Department of Civil Service as to whether the employee has worked out of class; or,
 - (3) A question exists between the employee, the appointing authority, or the Department of Civil Service as to the proper classification of the temporary duties and responsibilities.
- e. If the appointing authority fails to notify the Department of Civil Service of a potential working-out-of-class assignment, the employee may submit a request to the Department of Civil Service for a technical working-out-of-class determination position review, pursuant to rules 4-5(b)(1) and 4-2(a), and regulation 4.09, Employee Generated Position Reviews, to determine if a working-out-of-class assignment has been made. The employee's request must include a Position Description form, describing the temporary duties, and documentation that a request for working-out-of-class compensation was submitted to the appointing authority no later than 20-28 workdays after the end of the assignment.
- f. The appointing authority cannot enter into a grievance settlement agreement for a working-out-of-class assignment. Without such prior approval, the Department of Civil Service is not obligated to honor the grievance settlement.
- g. Credit, for qualification purposes, is granted for experience gained in documented working-out-of-class assignments if the employee meets the minimum education, licensure, registration, and certification requirements for the classification of the temporary assignment. Credit cannot exceed a maximum of 13 pay periods (see standard B-A.1.a-h.1.) or 26 pay periods (see standard B-A.1.a-h.2.).

2. Compliance

- a. The Department of Civil Service reviews all working-out-of-class payments. The appointing authority shall retain adequate documentation to substantiate compliance with these working-out-of-class regulations. Failure to supply

~~adequate documentation, upon request, may result in revocation of the appointing authority's delegated authority to process future payments for working out of class.~~

~~B.~~ **Nonexclusively Represented Employees**

~~1.~~ **Authorized**

~~a.h.~~ The appointing authority or agency management may assign an employee duties and responsibilities of a different classification on a temporary basis:

- ~~(1)~~ for up to 13 pay periods if the working-out-of-class assignment is made to provide temporary coverage for a position (coverage of vacant position). Exception requests for extensions of this standard for up to a maximum of one year may be submitted in writing before the end of the initial 13 pay period duration and are subject to the approval of the Department of Civil Service.
- ~~(2)~~ for up to 26 pay periods if the working-out-of-class assignment is made to provide temporary coverage during the absence of an employee who is expected to return to their assignment (coverage for employee on leave or project assignment).

~~b.i.~~ Upon completion of the maximum allowable time in a working-out-of-class assignment, an employee cannot be placed back into the same assignment on a working-out-of-class basis until after an additional 13 pay periods have elapsed.

~~c.i.~~ When the appointing authority intends or has reason to believe that the working-out-of-class assignment may last more than 13 pay periods (see standard ~~BA.1.a-h.1.~~) or 26 pay periods (see standard ~~B-A.1.ah-2.~~), the appointing authority shall make an appointment to the position. The appointment to the position is made in accordance with the civil service rules and regulations governing limited-term appointments.

~~d. The appointing authority may not enter into a grievance settlement agreement for a working out of class assignment when there is a question of what constitutes working out of class or credential credit without review and approval by the Department of Civil Service. Without such prior approval, the Department of Civil Service is not obligated to honor the grievance settlement.~~

2. Eligibility Criteria

a. All of the following criteria must be met for an employee to be eligible for working-out-of-class compensation:

- (1) The appointing authority or designee must direct the employee to perform the duties and assume the responsibilities of a different classification.
- (2) The employee must actually perform all, or substantially all, of the duties and responsibilities of the different classification that are different from the employee's classification.
- (3) The employee must perform the temporarily assigned duties and responsibilities for the qualifying time period of more than ten (10) consecutive, full workdays.
- (4) The employee should possess the education and experience requirements or be in a classification level that would ultimately satisfy the experience requirement for the working-out-of-class assignment. If the employee does not possess the required education or experience, the appointing authority must have documentation on file as to the reason for utilizing this employee in a working-out-of-class situation. This will be subject to Department of Civil Service audit. The employee must possess ~~the~~ any state or federal licensure, registration, and certification requirements, as stated on the job specification for positions in the classification.

b. The use of sick leave, annual leave, or the occurrence of a holiday during the 10-day qualifying time period does not

constitute a break or count as part of the 10-day qualifying period. The time lost because of leave usage or a holiday must be made up by an equal number of consecutive workdays before the qualifying time period is complete. Once the 10 consecutive-day time period has been satisfied, the employee will be compensated at the working-out-of-class pay rate for all subsequent usage of leave time and for the occurrence of holidays for the duration of the working-out-of-class period.

- c. When an employee has performed the duties and responsibilities of a different classification and has satisfied the qualifying time period, the appointing authority may process a pay adjustment for the applicable time period. The appointing authority must enter a comment line identifying the classification and position code of the position that necessitated the working-out-of-class assignment. This information is subject to review by the Department of Civil Service.
- d. An employee is entitled to compensation for working-out-of-class assignments totaling more than 10 consecutive, full workdays of actual work, commencing with the first day of the employee's assignment. For this calculation, any temporary assignment of less than one full workday is not considered as an assignment to another classification. In any 12-month period, an employee cannot be assigned to work out of class for more than one 10-consecutive-day period without being compensated at the appropriate higher rate for the full extent of any subsequent assignments to the same working-out-of-class assignment. This compensation is limited to the maximum of 13 pay periods (see standard [B-A.1.a-h.1.](#)) or 26 pay periods (see standard [B-A.1.a-h.2.](#)).
- e. An employee temporarily assigned to work in a classification that is assigned an equal or lower pay range than the employee's permanent classification is not eligible for working-out-of-class compensation.
- f. Determination of the working-out-of-class compensation rate must be in accordance with the standards in regulations 5.01 and 5.07.

- g.** Claims for working-out-of-class compensation must be submitted no later than 20—28 workdays from the discontinuance of the assignment. Claims submitted after that time period are not accepted for compensation purposes.

3. Compliance

- a.** The Department of Civil Service reviews all working-out-of-class payments. The appointing authority shall retain adequate documentation to substantiate compliance with these working-out-of-class regulations. Failure to supply adequate documentation, upon request, may result in revocation of the appointing authority's delegated authority to process future payments for working out of class.

C.B. Alternatives to Working Out of Class

- 1.** The Department of Civil Service has identified several alternatives to working an employee out of class. When the appointing authority becomes aware of an impending need to provide temporary job coverage for a position, during the absence of an employee or before the filling of a position vacancy, the following alternatives should be considered instead of working an employee out of class:

 - a.** Assigning supervisory/managerial assignments to other supervisor/ managerial personnel, eliminating the potential for working out of class.
 - b.** Making a limited-term appointment to a position.
 - c.** Making an emergency appointment of 28 days or less, pursuant to rule 3-3.3 and civil service regulations. Questions regarding the use of the emergency appointment process should be directed to the Department of Civil Service.
 - d.** Rotating the potential working-out-of-class assignment among several employees in the work area, being mindful of the limitations set forth in this regulation on working an employee out of class.

- e. Dividing the work function among the other employees in the work area, eliminating the potential for a working-out-of-class assignment.

5. PROCEDURE

<u>Responsibility</u>	<u>Action</u>
Agency Management or Employee	1. Submits a request for working-out-of-class compensation and documentation to the appointing authority of the department.
Appointing Authority	2. Reviews the request in accordance with the standards set forth in this regulation and other regulations. 3. Determines the appropriate classification and processes a working-out-of-class payment, in accordance with regulations 5.01 and 5.07. If the request is denied, documents the reason. 4. If the request involves a set of duties that has not been reviewed and classified or a dispute between the employee and the appointing authority as to the proper classification of the temporary assignment, submits a Position Action Request form
<u>Responsibility (cont.)</u>	<u>Action (cont.)</u>
Appointing Authority	(CS-129), Position Description form (CS-214), and any other necessary documentation to the Department of Civil Service for a classification review.
Department of Civil Service	5. Reviews the working-out-of-class request that involves a set of duties that has not been previously classified to determine the proper classification <u>and approvable time-frame</u> , documents it on the Position Action Request, and releases the Position Action Request form (CS-129) as a "No Action."

6. If the working-out-of-class request is denied, informs employee of the working-out-of-class decision and appeal rights.

Appointing Authority

7. Receives the Position Action Request form for the position review.
8. Processes the approval for payment, if appropriate.

CONTACT

Questions regarding this regulation should be directed to the Department of Civil Service, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909, (517) 373-3048 or 1-800-788-1766, or MDCS-BHRS@state.mi.us.

NOTE: Regulations are issued by the State Personnel Director under authority granted in the State of Michigan *Constitution* and the *Michigan Civil Service Commission Rules*. Regulations that implement Commission Rules are subordinate to those Rules.